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ABSTRACT

The State Education Department of New York receives many requests for extracts of the laws concerning schccl attendance. This booklet has been prepared in response to those requests. It attempts to assemble in book form most of the laws and regulations frequently referred to by administrators, attendance teachers, supervisors, and others involved in matters relating to school attendance. Included are the New York State laws and the Commissioner's regulations concerning school attendance as well as instructions for register keeping. (Author/LD)

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Legal Information Concerning School Attendance

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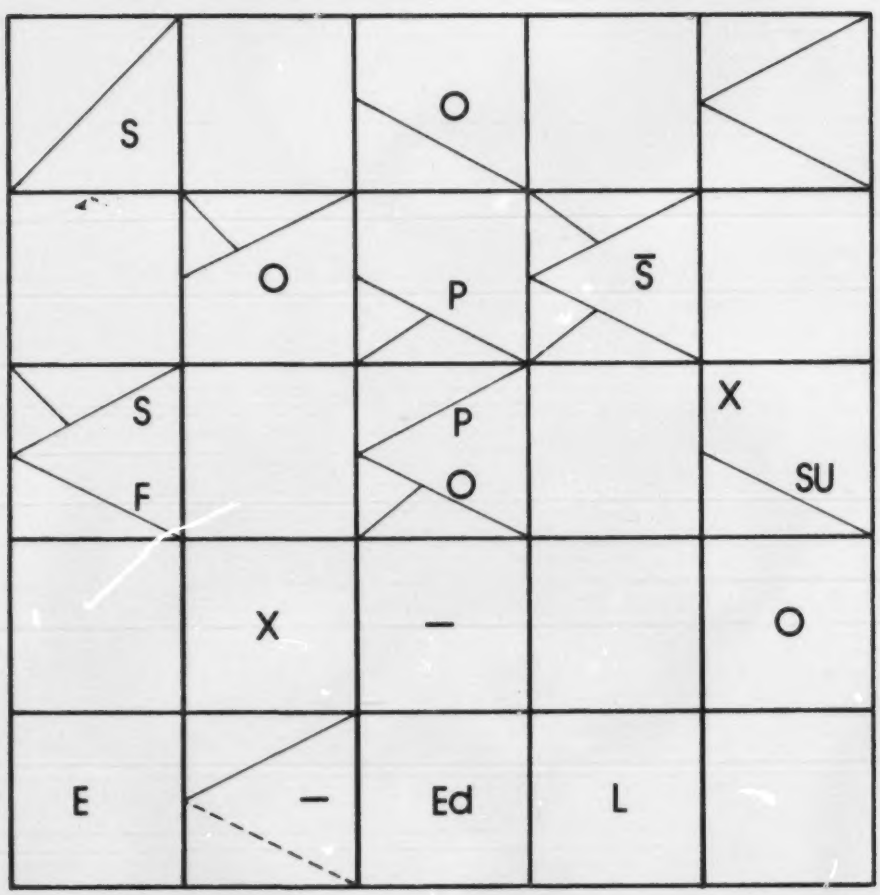

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THE STATE EDUCATION DEPARTMENT
Bureau of School Psychological and Social Services
Albany, New York 12234

January 1980 (Revised)

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FOREWORD

The State Education Department receives many requests for an extract of the laws concerning school attendance. This booklet has been prepared in response to those requests. It attempts to assemble in book form most of the laws and regulations frequently referred to by administrators, attendance teachers, supervisors, and others involved in matters relating to school attendance.

Many questions cannot be answered directly by the law. They require interpretation and a knowledge of intent. It is helpful in these cases to refer to the regulations of the Commissioner of Education and the opinions of Counsel. Copies of these items should be found in every superintendent's office.

Inquiries concerning information in this publication should be addressed to the Bureau of School Psychological and Social Services, State Education Department, Albany, New York 12234.

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3201. DISCRIMINATION ON ACCOUNT OF RACE, CREED, COLOR, OR NATIONAL ORIGIN PROHIBITED

1. No person shall be refused admission into or be excluded from any public school in the State of New York on account of race, creed, color, or national origin.

2. Except with the express approval of a board of education having jurisdiction, a majority of the members of such board having been elected, no student shall be assigned or compelled to attend any school on account of race, creed, color, or national origin or for the purpose of achieving equality in attendance or increased attendance or reduced attendance, at any school, of persons of one or more particular races, creeds, colors, or national origins; and no school district, school zone, or attendance unit, by whatever name known, shall be established, reorganized, or maintained for any such purpose, provided that nothing contained in this section shall prevent the assignment of a pupil in the manner requested or authorized by his parents or guardian, and further provided that nothing in this section shall be deemed to affect, in any way, the right of a religious or denominational educational institution to select its pupils exclusively or primarily from members of such religion or denomination or from giving preference to such selection to such members or to make such selection to its pupils as is calculated to promote the religious principle for which it is established. (Declared unconstitutional in Lee v. Nyquist DC N.Y. 1970, 318F. Supp. 710.)

3201-a. DISCRIMINATION ON ACCOUNT OF SEX.

Notwithstanding any general, special, local law or rule or regulation of the education department to the contrary, no person shall be refused admission into or be excluded from any course of instruction offered in the state public and high school systems by reasons of that person's sex. No person shall be disqualified from state public and high school athletic teams, by reason of that person's sex, except pursuant to regulations promulgated by the state commissioner of education.

3202. PUBLIC SCHOOLS FREE TO RESIDENT PUPILS; TUITION FROM NONRESIDENT PUPILS.

1. A person over five and under twenty-one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such person resides without the payment of tuition. A veteran of any age who shall have served as a member of the armed forces of the United States and who shall have been discharged therefrom under conditions other than dishonorable, may attend any of the public schools of the state upon conditions prescribed by the board of education, and such veterans shall be included in the pupil count for state aid purposes. A nonveteran under twenty-one years of age who has received a high school diploma shall be permitted to attend classes in the schools of the district in which such person resides or in a school of a board of cooperative educational services upon payment of tuition under such terms and conditions as shall be established in regu-

lations promulgated by the commissioner; provided, however, that a school district may waive the payment of tuition for such nonveteran, but in any case such a nonveteran who has received a high school diploma shall not be counted for any state aid purposes. Nothing herein contained shall, however, require a board of education to admit a child who becomes five years of age after the school year has commenced unless his birthday occurs on or before the first of December.

2. Nonresidents of a district, if otherwise competent, may be admitted into the school or schools of a district or city, upon the consent of the trustee or the board of education, upon terms prescribed by such trustees or board.

3. The school authorities of a district or city must deduct from the tuition of a nonresident pupil, whose parent or guardian owns property in such district or city and pays a tax thereon for the support of the schools maintained in such district, or city, the amount of such tax.

4. Except as provided in subdivision six of this section, children cared for in a duly incorporated orphan asylum or other institution for the care, custody and treatment of children, other than the children of the officers and employees of such institution, shall not, by reason of their presence in such institution, be deemed to be residents of the school district in which such institution is located. The trustees or other authorities in charge of any such institution may contract with the trustees or board of education of the school district in which such institution is located for the secular instruction of such children. If such children are supported and maintained at the expense of a public welfare district, the cost of the secular instruction of such children in the school or schools in the district shall be paid by the public welfare district which is liable for the payment of the cost of their support and maintenance. If such children are not supported and maintained at the expense of a public welfare district, the cost of the secular instruction of such children in the school or schools in the district shall be a charge upon and shall be paid by the school district responsible for their instruction at the time of their admittance to said duly incorporated orphan asylum or other institution for the care, custody, and treatment of children. The trustees or board of education of the school district in which such institution is located shall receive such children in the school or schools of the district for instruction for a compensation to be fixed by the trustees or board of education, unless such trustees or board of education shall establish to the satisfaction of the commissioner of education that there are valid and sufficient reasons for refusal to receive such children.

5. a. Except as provided in subdivision six of this section, the cost of instruction of pupils placed in family homes at board by a social services district or a state department or agency shall be borne by the school district in which each such pupil resided at the time the social services district or state department or agency assumed responsibility for the support and maintenance of such pupil; provided, however,

that such cost of instruction shall continue to be borne, while such pupil remains under the age of twenty-one years, by any social services district or state department or agency which assumed responsibility for tuition costs for any such pupil prior to January one, nineteen hundred seventy-four. Where the cost of instruction is to be borne by a district other than the district furnishing instruction tuition shall be computed as provided in paragraph d of this subdivision

b. Children cared for in free family homes and children cared for in family homes at board, when such family homes shall be the actual and only residence of such children and when such children are not supported and maintained at the expense of a social services district or of a state department or agency, shall be deemed residents of the school district in which such family home is located

c. Children cared for in free family homes and children cared for in family homes at board, when such family homes are not the actual and only residences of such children and when such children are not supported and maintained at the expense of a social services district or of a state department or agency, and who apply for the first time for admittance to the schools of the district in which such family home is located during the school year 1973-1974 shall be admitted upon terms and conditions including the payment of tuition, established by the board of education of such school district, unless such board of education shall establish to the satisfaction of the commissioner that there are valid and sufficient reasons for refusal to receive such children.

d. For the purposes of this subdivision, tuition shall be fixed in an amount which represents the add tional operating cost to the school district resulting from the attendance o a child for whom tuition is required, computed in accordance with a formula established by the commissioner of education.

6. a. Children who reside in a school for the mentally retarded operated by the department of mental hygiene and for whom the department has assumed responsibility for support and maintenance prior to July one, nineteen hundred seventy-seven and who are placed in a family home at board, a duly incorporated orphan asylum or other institution for the care, custody, and treatment of children shall be admitted to the schools of the school district in which such family home or institution is located. The education department is authorized to reimburse each school district furnishing educational services to such children for the direct cost of such services in accordance with regulations promulgated by the commissioner and approved by the director of the budget. The educational costs for these children shall not be otherwise aidable or reimbursable.

b. Children who reside in a school for the mentally retarded operated by the department of mental hygiene and for whose support and maintenance the department assumes responsibility on or after July one, nineteen hundred seventy-seven and who are thereafter placed in a family home at board, a duly incorporated orphan asylum or other institution for the care, custody, and treatment of children shall be admitted to the schools of the school district in which such family home or institution is located. The education department is authorized to reimburse each school district furnishing educational services to such children for the direct cost of such services in accordance with regulations promulgated by the commissioner

and approved by the director of the budget. The educational costs for these children shall not be otherwise aidable or reimbursable. The school district in which the child resided at the time the department of mental hygiene assumed responsibility for the support and maintenance of such child shall reimburse the education department for its expenditure on behalf of such child in an amount equal to the school district basic contribution, as such term is defined in subdivision eight of section four thousand four hundred one of this chapter. The comptroller may deduct from any state funds which become due to a school district an amount equal to the reimbursement required to be made by such school district in accordance with this paragraph, and the amount so deducted shall not be included in the operating expense of such district for the purpose of computing the apportionment for operating expense pursuant to subdivision eleven of section three thousand six hundred two of this chapter. The department of mental hygiene shall notify the education department of the name of the child, the location of the family home or institution where the child is to be placed and the name of the school district in which such child resided at the time the department of mental hygiene assumed responsibility for his support and maintenance.

c. (1) The education department is authorized to reimburse each school district furnishing educational services to children residing in schools for the mentally retarded operated by the office of mental retardation and developmental disabilities for the direct cost of such services in accordance with regulations promulgated by the commissioner and approved by the director of the budget.

(2) The school district in which each such child resided at the time the office of mental retardation and developmental disabilities assumed responsibility for the support and maintenance of such child shall reimburse the education department for its expenditures on behalf of such child, in an amount equal to the school district basic contribution as such term is defined in subdivision eight of section forty-four hundred one of this chapter, for any such child admitted to a state school for the retarded on or after July first, nineteen hundred seventy-eight. The comptroller may deduct from any state funds which become due to a school district an amount equal to the reimbursement required to be made by such school district in accordance with this paragraph and the amount so deducted shall not be included in the operating expense of such district for the purpose of computing the apportionment for operating expenses pursuant to subdivision eleven of section thirty-six hundred two of this chapter.

d. (1) Children who reside in an intermediate care facility for the mentally retarded, other than a state operated school for the mentally retarded, as defined in regulations of the office of mental retardation and developmental disabilities, shall be admitted to the public schools. The trustees or board of education of the school district in which such facility is located shall receive such children in the school or schools of the district for instruction and for the provision of necessary related services for a compensation to be fixed by the trustees or board of education, unless such trustees or board of education shall establish to the satisfaction of the commissioner of education that there are valid and sufficient reasons for refusal to receive such children. Evaluation of

the educational needs of such children and placement in appropriate educational programs shall be made in accordance with article eighty-nine of this chapter.

(2) Such intermediate care facility is authorized to contract with the trustees or board of education of such school district for the provision of services, including transportation.

(3) The education department shall reimburse such intermediate care facility for the full cost of all nonfederally reimbursable services which shall, notwithstanding any inconsistent provision of law, include transportation services, provided pursuant to a contract authorized by this paragraph.

(4) The school district in which the child resided at the time of placement in such intermediate care facility shall reimburse the education department for its expenditure on behalf of such child in an amount equal to the school district's basic contribution, as such term is defined in subdivision eight of section forty-four hundred one of this article for any child first admitted to such intermediate care facility, on or after July first, nineteen hundred seventy-nine.

(5) Upon certification by the commissioner of education, the comptroller may deduct from any state funds which become due to the school district an amount equal to the reimbursement required to be made by such school district in accordance with this paragraph, and the amount so deducted shall not be included in the operating expense of such district for the purpose of computing the apportionment for operating expenses pursuant to subdivision eleven of section thirty-six hundred two of this article.

(6) Within forty-five days of the placement of a child in a school district, the intermediate care facility shall notify the school district in which the child resided at time of entrance to the intermediate care facility and the school district in which the facility is located. Such notice shall include the name of the child, the location of the intermediate care facility, and the name of the school district in which such child resided at the time of placement.

(7) A board of education of a school district which receives notification that a child has been placed in an intermediate care facility for the mentally retarded may deny financial responsibility for any child by written notice within twenty days of such notification to the school district furnishing instruction and the intermediate care facility.

(8) An intermediate care facility responsible for placing the child, the school district furnishing instruction or the parent or guardian of the child involved may appeal a denial of responsibility to the commissioner of education. If the commissioner finds that the child was not a resident of the school district that was notified that the child was a resident therein, the commissioner shall request the intermediate care facility to ascertain the correct school district and notify such school district pursuant to subparagraph six of this paragraph. The commissioner shall

review and determine responsibility for the child in question. If the commissioner finds that a child has no residence in this state, he shall determine that there is no local contribution for such child.

(9) If the intermediate care facility fails to make a reasonable effort to identify the residence of such a child, such agency shall be responsible for the local contribution and, upon notification by the commissioner of education, shall pay such amount to the commissioner of education.

(10) If the intermediate care facility rejects the finding of the committee on the handicapped of the school district of attendance, or a finding affirmed or revised on appeal, such facility shall retain responsibility for payment of the cost of instruction of such child.

(11) Any final determination or order of the commissioner concerning residence or placement of any child under this paragraph may only be reviewed in a proceeding brought in the supreme court pursuant to article seventy-eight of the civil practice law and rules. In any such proceedings, the court may grant any relief authorized by the provisions of section seventy-eight hundred six of such law and rules or may, in its discretion, remand the proceedings to the commissioner. An intermediate care facility attempting to place a child pursuant to this paragraph shall be considered a proper party to any such proceeding.

(12) The school district providing educational services to children placed pursuant to this paragraph shall provide a report on the status of each such child with a handicapping condition annually to the committee on the handicapped of the school district in which the child resided at the time of admission to the intermediate care facility for the mentally retarded. Such report shall also be sent to the parent or guardian of the child and the office of mental retardation and developmental disabilities.

3203. SELECTION OF SCHOOL FOR ATTENDANCE OF CHILDREN WHEN DISTRICT LINE INTERSECTS A DWELLING

1. The owner of taxable property that is so located that the boundary line between two school districts intersects the dwelling on said property may designate the school in either of such districts to which the children lawfully residing in said dwelling shall attend by filing with the district clerk of each of such districts a notice of such designation on or before August first in any year and thereafter and, until a subsequent designation shall be made and filed, such children shall be deemed to be resident children of the district designated and shall be entitled to the school privileges of such district as resident pupils without the payment of tuition.

2. School taxes on such property shall continue to be levied and collected without reference to the aforesaid designation, but the school authorities of the district that levies and collects a tax upon such property and does not furnish instructional service to the children residing

on such property shall pay to the district designated, in which such children are received and instructed, the amount of the tax on such property so levied and collected. If any such district shall fail or refuse on demand to pay the amount of any tax so collected, the school authorities of the district designated and furnishing the instructional service may recover the amount in an action therefor.

3. A designation made as provided in this section shall continue until a new designation is made or until the district superintendent or superintendents having jurisdiction over the districts affected shall otherwise order in a proceeding for the alteration of the boundaries of the district, but no subsequent designation may be made in any school year after August first until the close of that school year.

3204. INSTRUCTION REQUIRED.

1. Place of instruction. A minor required to attend upon instruction by the provisions of part one of this article may attend at a public school or elsewhere. The requirements of this section shall apply to such a minor, irrespective of the place of instruction.

2. Quality and language of instruction; textbooks. Instruction may be given only by a competent teacher. In the teaching of the subjects of instruction prescribed by this section, English shall be the language of instruction, and textbooks used shall be written in English, except that for a period of three years, which period may be extended by the commissioner with respect to individual pupils, upon application therefor the appropriate school authorities to a period not in excess of six years, from the date of enrollment in school, pupils who, by reason of foreign birth, ancestry or otherwise, experience difficulty in reading and understanding English, may, in the discretion of the board of education, board of trustees or trustee, be instructed in all subjects in their native language and in English. Instructions given to a minor elsewhere than at a public school shall be at least substantially equivalent to the instruction given to minors of like age and attainments at the public schools of the city or district where the minor resides.

2-a Bilingual instruction in schools. 1. The governing board of any school district is hereby empowered to determine the circumstances and necessity wherein instruction shall be given bilingually. The said governing board shall design the necessary procedures and acquire the necessary training materials and equipment to meet the special educational needs of children of limited English speaking ability through programs designed to accomplish the following:

a. bilingual education;
b. to impart to students a knowledge of the history and culture associated with their languages;
c. to establish closer cooperation between the school and the home;

d. to provide early childhood educational programs related to the purposes of this section and designed to improve the potential for profitable learning activities by children;
e. to provide adult education programs related to the purposes of this section, particularly for parents of children participating in bilingual programs;
f. to provide programs designed for dropouts or potential dropouts having need of bilingual programs;
g. to provide programs to be conducted by accredited trade, vocational or technical schools; and
h. to provide other activities deemed desirable to further the purposes of this section.

2. Any duly authorized local educational agency or agencies is hereby empowered to make application for any grant or grants in furtherance of this section under Title VII Public Law 90-247 as enacted by the United States Congress January second, nineteen hundred sixty-eight.

3. Courses of study. a. (1) The course of study for the first eight years of full time public day schools shall provide for instruction in at least the twelve common school branches of arithmetic, reading, spelling, writing, the English language, geography, United States history, civics, hygiene, physical training, the history of New York State and science.

(2) The courses of study and of specialized training beyond the first eight years of full time public day schools shall provide for instruction in at least the English language and its use, in civics, hygiene, physical training, and American history including the principles of government proclaimed in the Declaration of Independence and established by the constitution of the United States.

(3) The courses of study beyond the first eight years of full time public day schools may provide a program for a course in "communism and its methods and its destructive effects".

b. For part time day schools. The course of study of a part time public day school shall include such subjects as will enlarge the civic and vocational intelligence and skill of the minors required to attend.

c. For evening schools. In a public evening school instruction shall be given in at least speaking, reading, and writing English.

d. For parental schools. In a parental school provision shall be made for vocational training and for instruction in other subjects appropriate to the minor's age and attainments.

e. Changes in courses of study. The state education department shall have power to alter the subjects of instruction as prescribed in this section.

4. Length of school sessions. a. A full time day school or class, except as otherwise prescribed, shall be in session for not less than one hundred ninety days each year, inclusive of legal holidays that occur during the term of said school and exclusive of Saturdays.

(The 190 days required by this paragraph no longer holds. Section 3604 on which state aid is based was amended in 1958 to provide for a session of 180 days. Through oversight, Section 3204, subdivision 4 was not amended. The intent is to require 180 days of instruction).

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(b) A part time day school or class shall be in session each year for at least four hours of each week during which the full time day schools are in session.

(c) Evening schools shall be in session each year as follows:

(1) In cities having a population of one hundred thousand or more, on at least one hundred nights;

(2) In cities having a population of fifty thousand but less than one hundred thousand, on at least seventy-five nights;

(3) In each other city, and in each school district where twenty or more persons from seventeen to twenty-one years of age are required to attend upon evening instruction, on at least fifty nights.

5. Subject to rules and regulations of the board of regents, a pupil may, consistent with the requirements of public education and public health, be excused from such study of health and hygiene as conflicts with the religion of his parents or guardian. Such conflicts must be certified by a proper representative of their religion as defined by section two of the religious corporation law.

3205. ATTENDANCE OF MINORS UPON FULL-TIME DAY INSTRUCTION.

1. a. In each school district of the state, each minor from six to sixteen years of age shall attend upon full-time instruction.

b. Each minor from six to sixteen years of age on an Indian reservation shall attend upon full-time day instruction.

2. Exceptions. a. A minor who has completed a four-year high school course of study shall not be subject to the provisions of part one of this article in respect to required attendance upon instruction.

b. A minor for whom application for a full-time employment certificate has been made and who is eligible therefor, may, though unemployed, be permitted to attend part-time school not less than twenty hours per week instead of full-time school.

3. In each city of the state and in union free school districts having a population of more than forty-five hundred inhabitants and employing a superintendent of schools, the board of education shall have power to require minors from sixteen to seventeen years of age who are not employed to attend upon full-time day instruction.

3206. ATTENDANCE OF MINORS UPON PART-TIME INSTRUCTION.

1. The board of education of a city or district shall have power to require each employed minor from sixteen to seventeen years of age to attend upon part time instruction in accordance with the provisions of this section.

2. A minor who is a graduate of a four-year high school course of study shall not be required to attend upon part time instruction.

3. The attendance of an employed minor required to attend upon part-time instruction by a board of education in accordance with the provisions of this section shall be for not less than four, nor more than eight hours per week, and on such day or days of the week as the school authorities may determine.

4. An employed minor, while temporarily unemployed, or a minor attending part-time school under the provisions of subdivision two, paragraph b, of section thirty-two hundred five, required to attend part-time instruction by a board of education in accordance with the provisions of this section, shall attend upon part-time day instruction for not less than twenty hours a week. An employed minor shall be deemed to be temporarily unemployed until he reenters lawful employment or attends upon full-time day instruction.

5. The absence of an employed minor during a rush season may be permitted by the school authorities on condition that the minor attend a greater number of hours per week thereafter until the absence is made up, and provided that the minor's employer is a party to such an agreement.

6. An absence due to unlawful cause may be required to be made up by attendance in excess of the number of hours per week otherwise required.

7. The school authorities of a city or district shall have power after a hearing to establish a half-time system or program of employment and required attendance at part-time schools for minors who are included by the provisions of this section.

8. Each minor above the age of sixteen years and under the age of eighteen years, who is not in regular full-time day attendance at a public, private or parochial school or who is regularly and lawfully employed in some occupation or service, unless such minor has completed a four-year secondary course of instruction approved by the regents of the university, shall attend a part-time school or class in the city or district in which such minor resides or may be employed, provided the board of education of such city or district has enacted appropriate rules and regulations requiring attendance at such part-time schools under the provisions of section forty-six hundred one. Such attendance shall be subject to the provisions of article ninty-three of this chapter.

3207. ATTENDANCE UPON EVENING INSTRUCTION.

In each city and school district in which evening instruction is provided, under the provisions of part one of this article, each person from seventeen to twenty-one years of age who is unable to speak, read, and write English as required for the completion of the fifth year of the elementary school course of study, and who is not attending upon equivalent day instruction, shall attend upon such evening instruction.

3208. ATTENDANCE OF MINORS, PROPER MENTAL AND PHYSICAL CONDITION.

1. A person included by the provisions of part one of this article shall be required to attend upon instruction only if in proper mental and physical condition.

2. A person whose mental or physical condition is such that his attendance upon instruction under the provisions of part one of this article would endanger the health or safety of himself or of others, or who is feebleminded to the extent that he is unable to benefit from instruction, shall not be permitted to attend.

3. A person whose mental or physical condition is such that, because of the lack of facilities for his care, transportation and instruction, he is not permitted or required to attend upon instruction, shall be deemed in proper mental and physical condition to attend, if the lacking facilities are provided.

4. If a person's mental or physical condition, by virtue of which he is not required or permitted to attend upon instruction, is due to physical defects or to a physical condition which my be remedied by the taking of reasonable measures, such mental or physical condition shall justify only the temporary failure of the person to attend.

5. The determination of mental or physical condition under the provisions of part one of this article shall be based upon actual examination made by a person or persons qualified by appropriate training and experience in accordance with regulations of the state education

department. The state education department shall designate persons having the required qualifications to make such mental or physical examinations on behalf of any local school authorities, except that in a city having a population of one million or more the superintendent of schools shall designate such persons.

3209. DUTIES OF PUBLIC WELFARE OFFICIALS WITH RESPECT TO INDIGENT CHILDREN.

Public welfare officials, except as otherwise provided by law, shall furnish indigent children with suitable clothing, shoes, books, food, and other necessaries to enable them to attend upon instruction as hereinbefore required by law.

3210. AMOUNT AND CHARACTER OF REQUIRED ATTENDANCE.

1. Regularity and conduct. a. A minor required by the provisions of part one of this article to attend upon instruction shall attend regularly as prescribed where he resides or is employed, for the entire time the appropriate public schools or classes are in session and shall be subordinate and orderly while so attending.

b. Absence for religious observance and education shall be permitted under rules that the commissioner shall establish.

2. Attendance elsewhere than at a public school. a. Hours of attendance. If a minor included by the provisions of part one of this article attends upon instruction elsewhere than at a public school, he shall attend for at least as many hours, and within the hours specified therefor.

b. Absence. Absence from required attendance shall be permitted only for causes allowed by the general rules and practices of the public schools. Absence for religious observance and education shall be permitted under rules that the commissioner shall establish.

c. Holidays and vacations. Holidays and vacations shall not exceed in total amount and number those allowed by the public schools.

d. Exception. In applying the foregoing requirements a minor required to attend upon full time day instruction by the provisions of part one of this article may be permitted to attend for a shorter school day or for a shorter school year or for both, provided, in accordance with the regulations of the state education department, the instruction he receives has been approved by the school authorities as being substantially equivalent in amount and quality to that required by the provisions of part one of this article.

e.* Registration of certain private schools. No person or persons, firm or coporation, other than the public school authorities or an established religious group, shall establish or maintain a nursery school

and/or kindergarten and/or elementary school giving instruction in the ten common school branches of arithmetic, reading, spelling, writing, the English language, geography, United States history, civics, hygiene and physical training, unless the school is registered under regulations of the commissioner. Upon complying with said regulations and after payment of a fee of twenty-five dollars a certificate of registration shall be issued by the department which shall be valid for a period of two years from the date of issuance unless suspended or revoked within said period pursuant to said regulations. Such registration may be renewed biannually thereafter upon the payment of a renewal registration fee of twenty-five dollars.

*Paragraph "e" has been declared unconstitutional by the courts.

3211. RECORDS OF ATTENDANCE UPON INSTRUCTION.

1. Who shall keep such record. The teacher of every minor required by the provisions of part one of this article to attend upon instruction, or any other school district employee as may be designated by the commissioner of education under section three thousand twenty-four of this chapter, shall keep an accurate record of the attendance and absence of such minor. Such record shall be in such form as may be prescribed by the commissioner of education.

2. Certificates of attendance to be presumptive evidence. A duly certified transcript of the record of attendance and absence of a child which has been kept, as provided in this section, shall be accepted as presumptive evidence of the attendance of such child in any proceeding brought under the provisions of part one of this article.

3. Inspection of records of attendance. An attendance officer, or any other duly authorized representative of the school authorities, may at any time during school hours, demand the production of the records of attendance of minors required to be kept by the provisions of part one of this article, and may inspect or copy the same and make all proper inquiries of a teacher or principal concerning the records and the attendance of such minors.

4. Duties of principal or person in charge of the instruction of a minor. The principal of a school, or other person in charge of the instruction upon which a minor attends, as provided by part one of this article, shall cause the record of his attendance to be kept and produced and all appropriate inquiries in relation thereto answered as hereinbefore required. He shall give prompt notification in writing to the school authorities of the city or district of the discharge or transfer of any such minor from attendance upon instruction, stating the date of the discharge, its cause, the name of the minor, his date of birth, his place of residence prior to and following discharge, if such a place of residence be known, and the name of the person in parental relation to the minor.

3212. DEFINITION OF PERSONS IN PARENTAL RELATION AND THEIR DUTIES; DUTIES OF CERTAIN MINORS AND OTHER PERSONS

1. Definition. As used in this article, a person in parental relation to another individual shall include his father or mother, by birth or adoption, his step-father or step-mother, his legally appointed guardian, or his custodian. A person shall be regarded as the custodian of another individual if he has assumed the charge and care of such individual because the parents or legally appointed guardian of such individual have died, are imprisoned, are mentally ill, have been committed to an institution, or because, they have abandoned or deserted such individual or are living outside the state or their whereabouts are unknown.

2. Duties of persons in parental relation. Every person in parental relation to another individual included by the provisions of part one of this article:

a. Shall submit at the time such individual begins to attend upon instruction evidence of age as required for the issuance of an employment certificate, or show that such evidence cannot be produced.

b. Shall cause such individual to attend upon instruction as hereinbefore required, and to comply with the provisions of part one of this article with respect to the employment or occupation of minors in any business or service whatever.

c. Shall cause such individual to be placed in proper physical condition to attend upon required instruction, if his physical condition is remediable by the taking of reasonable measures.

d. Shall furnish proof that an individual who is not attending upon instruction at a public or parochial school in the city or district where the person in parental relation resides is attending upon required instruction elsewhere. Failure to furnish such proof shall be presumptive evidence that such individual is not attending.

e. Shall furnish, with respect to an individual from seventeen to twenty-one years of age, on demand of a duly authorized representative of the school authorities, satisfactory proof that he is able to speak, read, and write English as required for the completion of the fifth year of the elementary school course of study, or cause such individual to submit to an examination to determine his ability in these respects.

3. Exception. A person in parental relation to another individual included by the foregoing provisions of this section shall not be subject thereto if it can be shown that he is unable to control such individual.

4. Duties of certain individuals from sixteen to twenty-one years of age. An individual from sixteen to twenty-one years of age, if not under the control of a person in parental relation, shall comply with such requirements of part one of this article as are applicable.

5. Duties of other persons.

a. No person shall induce another individual to absent himself from attendance upon required instruction or harbor him while he is absent or aid or abet him in violating any provision of part one of this article.

b. No person shall interfere with an attendance officer in the lawful pursuit of his duties, or neglect or refuse to answer his lawful inquiries.

c. No person shall violate any provision of part one of this article in relation to employment of minors, duties of employers, issuance or transfer of any paper authorizing the employment of minors.

d. No person shall make a false oral or written statement in or in relation to any employment certificate or other paper required by part one of this article as to any matter required to appear therein.

e. Repealed

f. No person shall present as his own any substitute, altered or transferred certificate or badge.

6. Birth certificates. For the purpose of part one of this article, the board of health upon request shall furnish to the school authorities, or to the person in parental relation to a minor, or to an individual from seventeen to twenty-one years of age, a duly certified transcript of the birth certificate, filed according to law, of an individual from five to twenty-one years of age.

3212-a RECORDS OF TELEPHONE NUMBERS

1. Each school shall maintain a record of the telephone number of each pupil enrolled in the school and each person in parental relation to such pupil including the residentail and business telephone numbers of persons in parental relation to pupils unless such person or pupil chooses not to supply such numbers. The record of such telephone numbers shall, except as otherwise provided by law, be accessible solely for emergency purposes.

2. The provisions of this section shall not be applicable in any school district in which the board of education has adopted a resolution providing that the record otherwise required hereby shall not be maintained.

3213. SUPERVISORS OF ATTENDANCE: ATTENDANCE TEACHERS: ATTENDANCE OFFICERS: APPOINTMENT, COMPENSATION, POWERS AND DUTIES

1. Appointment, removal, compensation and supervision. a. To

the end that children shall not suffer through unnecessary failure to attend school for any cause whatsoever, it shall be the duty of each attendance teacher and each attendance supervisor to secure for every child his right to educational opportunities which will enable him to develop his fullest potentialities for education, physical, social and spiritual growth as an individual and to provide for the school adjustment of any non-attendance child in cooperation with school authorities, special school services and community and social agencies.

The school authorities of each city school district, union free school district, central school district, central high school district, or common school district whose limits include in whole or in part an incorporated village, shall appoint and may remove one or more supervisors of attendance or attendance teachers of such district. A supervisor of attendance shall be appointed in accordance with civil service law and rules, unless he or she is a licensed attendance teacher licensed to teach in New York State, with such further qualifications as the board of regents shall establish. On and after July first, nineteen hundred fifty-five no full-time supervisor of attendance shall be appointed unless he or she holds a license as attendance teacher. Such supervisors of attendance and those holding full-time positions who are similarly licensed teachers or who hold attendance teacher licenses shall be assigned to the step in the salary schedule of the school district commensurate with the salary being paid such supervisors of teachers. Such persons shall be paid thereafter in accordance with such schedule. if the amount of salary received on said July first, nineteen hundred fifty-five is less than the minimum step of salary schedule, such supervisor or teacher shall be paid until June thirtieth, nineteen hundred fifty-six at the rate of the first step and in accordance with the schedule thereafter.

No supervisor of attendance or attendance teacher shall be appointed who is not twenty-one years of age and in proper physical condition.

In the establishment of an eligible list advanced education related to attendance service shall be taken into consideration in the grading of the candidates. Experience in teaching, in social service and welfare work, and in business or in the professional field shall likewise be taken into consideration.

Paragraph a of subdivision one of this section shall apply to a city in which attendance supervisors are appointed from an eligible list now prepared by a board of examiners.

Supervisors of attendance in a city having a board of examiners shall be licensed as attendance teachers only when they comply with the regulations for such license as established by the commissioner of education and any additional requirements which may be established by the board of examiners.

The board of education shall fix the compensation of part-time supervisors of attendance and prescribe their duties not inconsistent with part one of this article and make rules and regulations for the performance thereof. The superintendent of schools or district superintendent of

schools shall supervise the enforcement of part one of this article within such city or school district.

b. The town board of each town, with the approval, in writing, of the district superintendent, shall appoint, on or before August first of each year, one or more attendance officers and shall fix their compensation. During the school year it shall also fill promptly any vacancy after notification thereof by the district superintendent. The district superintendent shall promptly notify the town board of his approval or disapproval of an appointment. If within one month a town board shall not comply with the foregoing provisions, the district superintendent, subject to appeal to the commissioner of education, shall exercise the powers and duties of the town board with respect thereto. An attendance officer appointed for a town shall have jurisdiction over all school districts of the town which are not otherwise provided for by this section. He shall be removable at the pleasure of the district superintendent. His compensation and his necessary expenses in attending conferences called by the district superintendent shall be a town charge.

c. In case a school district shall include territory lying within the boundaries of more than one town, the attendance officer appointed by the town in which the schoolhouse is located shall have jurisdiction over the entire school district.

2. Powers and duties. a. Arrest of truants. A supervisor of attendance, attendance teacher or attendance officer, as the case may be, may arrest without warrant any minor who is unlawfully absent from attendance upon instruction. He shall forthwith place the minor so arrested in attendance upon required instruction and shall notify the parent or guardian of the minor, and he may then begin proceedings for his commitment as a school delinquent or arraign him before a court having jurisdiction. Where a minor resides in one school district and attends school in another district, the supervisor of attendance, attendance teacher or attendance officer of the district where the minor resides and the supervisor of attendance, attendance teacher or attendance officer of the district where said minor attends school shall have concurrent jurisdiction with reference to said minor and to the person or persons in parental relation to him.

b. Right of entry.

(1) A supervisor of attendance, attendance teacher or attendance officer, as the case may be, in the performance of his duties, may enter during business hours any factory, mercantile or other establishment, or other place in which a minor is believed to be employed, within the city or school district in which he is appointed, and shall be entitled to examine on demand the employment certificates or work permits of minors therein employed, for whose lawful employment such certificates or permits are required by the provisions of part one of this article.

(2) He may also enter any public place during the hours in which the public have access thereto, to ascertain if any minor is therein who is required to attend upon instruction by the provisions of part one of this article, or engaged in a street trade contrary to the provisions of

part one of this article, or to collect information required for the school census.

c. Peace officers. Supervisors of attendance, attendance teachers and attendance officers shall be vested with the powers of peace officers for the purpose of carrying out the provisions of part one of this article.

3214. SCHOOL FOR DELINQUENTS

1. School delinquent. A minor under seventeen years of age, required by any of the provisions of part one of this article to attend upon instruction, who is a habitual truant from such instruction or is irregular in such attendance or insubordinate or disorderly during such attendance, is a school delinquent.

2. Special day schools. The school authorities of any city or school district may establish schools or set apart rooms in public school buildings for the instruction of school delinquents, and fix the number of days per week and the hours per day of required attendance, which shall not be less than is required of minors attending the full time day schools.

3. Suspension of a pupil. a. The board of education, board of trustees, or sole trustee, the superintendent of schools, or district superintendent of schools may suspend the following pupils from required attendance upon instruction.

(1) A pupil who is insubordinate or disorderly, or whose conduct otherwise endangers the safety, morals, health or welfare of others;

(2) A pupil whose physical or mental condition endangers the health, safety or morals of himself or of other pupils;

(3) A pupil who, as determined in accordance with the provisions of part one of this article, is feebleminded to the extent that he cannot benefit from instruction.

b. The board of education, board of trustees, or sole trustee may adopt by-laws delegating to the principal of the district, or the principal of the school where the pupil attends, the power to suspend a pupil for a period not to exceed five school days.

c. No pupil may be suspended for a period in excess of five school days unless such pupil and the person in parental relation to such pupil shall have had an opportunity for a fair hearing, upon reasonable notice, at which such pupil shall have the right of representation by counsel, with the right to question witnesses against such pupil and to present witnesses and other evidence on his behalf. Where a pupil has been suspended in accordance with this section by a superintendent of schools, district superintendent of schools or community superintendent, the super-

intendent shall personally hear and determine the proceeding or may, in his discretion, designate a hearing officer to conduct the hearing. The hearing officer shall be authorized to administer oaths and to issue subpoenas in conjunction with the proceeding before him. A record of the hearing shall be maintained, but no stenographic transcript shall be required and a tape recording shall be deemed a satisfactory record. The hearing officer shall make findings of fact and recommendations as to the appropriate measure of discipline to the superintendent. The report of the hearing officer shall be advisory only, and the superintendent may accept all or any part thereof. An appeal will lie from the decision of the superintendent to the board of education who shall make its decision soley upon the record before it. The board may adopt in whole or in part the decision of the superintendent of schools.

Where a pupil has been suspended in accordance with this section by a board of education, the board may in its discretion hear and determine the proceeding or appoint a hearing officer who shall have the same powers and duties with respect to the board that a hearing officer has with respect to a superintendent where the suspension was ordered by him. The findings and recommendations of the hearing officer conducting the proceeding shall be advisory and subject to final action by the board of education, each member of which shall before voting review the testimony and acquaint himself with the evidence in the case. The board may reject, confirm or modify the conclusions of the hearing officer.

d. In the case of a suspension by the principal pursuant to paragraph b of this subdivision, the pupil and the person in parental relation to him shall, on request, be given an opportunity for an informal conference with the principal at which the person in parental relation shall be authorized to ask questions of complaining witnesses.

e. Procedure after suspension. Where a pupil has been suspended as insubordinate or disorderly and said pupil is of compulsory attendance age, immediate steps shall be taken for his attendance upon instruction elsewhere or for supervision or detention of said pupil pursuant to the provisions of article seven of the family court act. Where a pupil has been suspended for cause, the suspension may be revoked by the board of education whenever it appears to be for the best interest of the school and the pupil to do so.

f. Whenever the term "board of education or superintendent of schools" is used in this subdivision, it shall be deemed to include community boards of education and community superintendents governing community districts in accordance with the provisions of article fifty two-a of the education law.

4. Expense. a. The expense attending the commitment and costs of maintenance of any school delinquent shall be a charge against the city or district where he resides, if such city or district employs a superintendent of schools; otherwise it shall be a county charge.

b. The school authorities may institute proceedings before a court having jurisdiction to determine the liability of a person in parental relation to contribute towards the maintenance of a school delinquent under

sixteen years of age ordered to attend upon instruction under confinement. If the court shall find the person in parental relation able to contribute towards the maintenance of such a minor, it may issue an order fixing the amount to be paid weekly.

5. (See also subdivision 5 below)
Involuntary transfers of pupils who have not been determined to be handicapped as defined in section forty-four hundred one of this chapter.

a. The board of education, board of trustees or sole trustee, the superintendent of schools may transfer a pupil who has not been determined to be handicapped as defined in section forty-four hundred one of this chapter from regular classroom instruction to an appropriate educational setting in another school upon the written recommendation of the school principal and following independent review thereof. For purposes of this section of the law, "involuntary transfer" does not include a transfer made by a school district as part of a plan to reduce racial imbalance within the schools or as a change in school attendance zones or geographical boundaries.

b. A school principal may initiate a non-requested transfer where it is believed that such a pupil would benefit from the transfer, or when the pupil would receive an adequate and appropriate education in another school program or facility.

No recommendation for pupil transfer shall be initiated by the principal until such pupil and a person in parental relation has been sent written notification of the consideration of transfer recommendation. Such notice shall set a time and place of an informal conference with the principal and shall inform such person in parental relation and such pupil of their right to be accompanied by counsel or an individual of their choice.

c. After the conference and if the principal concludes that the pupil would benefit from a transfer or that the pupil would receive an adequate and appropriate education in another school program or facility, the principal may issue a recommendation of transfer to the superintendent. Such recommendation of transfer to the superintendent. Such recommendation shall include a description of behavior and/or academic problems indicative of the need for transfer; a description of alternatives explored and prior action taken to resolve the problem. A copy of that letter shall be sent to the person in parental relation and to the pupil.

d. Upon receipt of the principal's recommendation for transfer and a determination to consider that recommendation, the superintendent shall notify the person in parental relation and the pupil of the proposed transfer and of their right to a fair hearing as provided in paragraph c of subdivision three of this section and shall list community agencies and free legal assistance which may be of assistance.

The written notice shall include a statement that the pupil or person in parental relation has ten days to request a hearing and that the proposed

transfer shall not take effect, except upon written parental consent, until the ten day period has elapsed, or, if a fair hearing is requested, until after a formal decision following the hearing is rendered, whichever is later.

Parental consent to a transfer shall not constitute a waiver of the right to a fair hearing.

5. (See also subdivision 5 above)
Transfer of a pupil. Where a suspended pupil is to be transferred, he shall remain on the register of the original school for two school days following transmittal of his records to the school to which he is to be transferred. The receiving school shall immediately upon receiving those records transmitted by the original school, review them to insure proper placement of the pupil. Staff members who are involved in the pupil's education must be provided with pertinent records and information relating to the background and problems of the pupil before the pupil is placed in a classroom.

3215. UNLAWFUL EMPLOYMENT.

1. It shall be unlawful, except as otherwise provided by law, to employ in any trade, business, or service a minor who does not present an employment certificate or permit issued in accordance with this article.

2. No minor shall be employed during hours when attendance upon instruction is required by this chapter.

3. No minor shall be employed in violation of any provision of the labor law or other law.

4. Exceptions. a. When attendance upon instruction is not required by this chapter, a minor fourteen years of age or over may be employed without an employment certificate or permit in the following occupations:

(1) Caddy service on a golf course;
(2) Service as a baby sitter staying with and at the home of another child or children with or without the presence at such home of such child or children's parents or guardians;
(3) Casual employment of a minor fourteen or fifteen years of age consisting of yard work and household chores in and about a residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery; and
(4) Casual employment of a minor sixteen years of age or over consisting of yard work and household chores in and about a residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery other than power-driven machinery ordinarily used in such yard work or

household chores.

b. When attendance upon instruction is not required, a minor sixteen years of age or over may be employed in work on a farm without an employment certificate or permit.

c. Nothing in this section shall prohibit the employment of a minor during the school lunch period in a school cafeteria at the school which the minor attends if the minor presents an employment certificate issued in accordance with this article.

d. Nothing in this section shall be construed to prohibit the employment of a minor in accordance with sections thirty-two hundred twenty-six through and including section thrity-two hundred thirty of this chapter.

e. Nothing in this section shall be construed to prohibit the employment of a minor twelve years of age or over in work for his parents or guardians on the home farm or at other outdoor work not connected with or for any trade, business or service when attendance upon instruction is not required by this chapter.

f. Notwithstanding any other provision of this chapter, an employment certificate or permit shall not be required for a student sixteen years of age or over who is in attendance at a recognized institution of higher learning and who is employed by a non-profit college or university or by a non-profit college or university fraternity, sorority, student association or faculty association.

3215-a GENERAL CERTIFICATION PROVISIONS

1. Certificating officials. Employment certificates or permits shall be issued by the chancellor in New York City, and by the superintendent of schools in other cities and in school districts employing a superintendent of schools, and elsewhere by the district superintendent of schools. The chancellor in New York City, or elsewhere the superintendent of schools or district superintendent of schools may designate in writing the principal of the public school the minor attends or last attended or other public school official to act as certificating official in his stead. During the months of July and August, and at other times in extraordinary circumstances and emergencies, one or more public school officials shall be designated in writing by the chancellor in New York City and elsewhere by the superintendent or district superintendent to act as certificating officials. The designation or authorization of certificating officials in public schools shall be subject to such limitations or standards as may be prescribed by the chancellor in New York City and elsewhere by the superintendent or district superintendent.

2. Revocation. Employment certificates or permits may be revoked for cause by the chancellor in New York City and elsewhere by the superintendent of schools or the district superintendent of schools within their respective jurisdictions.

3. Approval of form and contents. The commissioner of education shall prescribe or approve the form and contents of all certificates, permits, physical examination records, and schooling records required by part one of this article. The form of such certificates and permits shall also be subject to the approval of the industrial commissioner.

3216. EMPLOYMENT CERTIFICATES

1. A student non-factory employment certificate may be issued to a minor fourteen or fifteen years of age who is attending day school. The certificate shall be valid for work in a trade, business or service, but shall not be valid for work in or in connection with a factory except as provided in subdivision four of section one hundred thirty-one of the labor law.

2. A student general employment certificate may be issued to a minor sixteen or seventeen years of age who is attending day school. It shall be valid for work in or in connection with a factory or any other trade, business or service.

3. A full-time employment certificate may be issued to a minor sixteen or seventeen years of age who is not attending day school or who declares his intention to leave day school for full-time employment. It shall be valid for work in or in connection with a factory or any other trade, business or service. A full-time employment certificate also may be issued to a minor who is a graduate of a four-year high school, but if such minor is under sixteen years of age the certificate shall not be valid for work in or in connection with a factory except as provided in subdivision four of section one hundred and thirty-one of the labor law.

4. A limited employment certificate may be issued as provided in subdivision two of section thirty-two hundred twenty of this article.

5. A special employment certificate may be issued as provided in section thirty-two hundred twenty-five of this article.

6. An employment certificate shall be valid not only for the initial employment but also for subsequent employments in work permitted by the particular type of certificate.

7. An employment certificate shall expire two years from the date of its issuance, except as otherwise provided in this article. No employment certificate shall be valid for employment in violation of any provision of the labor law or rules issued thereunder.

8. An employment certificate shall be kept on file at the place of the minor's employment and shall be returned to the minor when the employment terminates.

3217. PROCEDURE FOR ISSUANCE OF EMPLOYMENT CERTIFICATES

1. An application for an employment certificate shall be made by a minor on a form prescribed by the commissioner of education.

2. Before issuing an employment certificate the issuing official shall require the minor to submit the following:

a. Evidence of age;
b. Written consent of the parent or guardian;
c. A certificate of physical fitness; and
d. If the application is for a full-time employment certificate, a schooling record.

In addition, in a city or school district which, pursuant to section thirty-two hundred five, subdivision three of this article requires minors from sixteen to seventeen years of age who are not employed to attend school, the certificating official shall require a minor applying for a full-time employment certificate to submit the following:

a. A pledge of employment; and
b. A schooling record.

3218. EVIDENCE OF AGE

1. Evidence showing that the minor is of the required age shall be presented as follows:

a. A duly certified transcript of a birth certificate filed according to law, or duly certified transcript of a record or baptism, giving the date of birth; or if not available,
b. A passport showing the date of birth of the minor; or if not available,
c. Other documentary evidence or other recorded evidence in existence two years or more, and satisfactory to the certificating officer, except an affidavit of age.

2. Certificate of age. A person over eighteen years of age may apply for a certificate of age to the superintendent of schools, the district superintendent, or to the certificating officer. Upon such application a certificate of age, containing the name, date of birth, address and signature of the applicant, shall be issued to him if he furnishes such evidence that he is over eighteen years of age as is required for the issuance of an employment certificate. Such a certificate of age or an employment certificate previously issued for such person shall be conclusive evidence for an employer that the person has reached the age certified to therein.

3219. CONSENT OF PARENT OF GUARDIAN.

If the application is for a full time employment certificate a parent or guardian shall personally appear before the issuing officer or school authorities to indicate consent to the issuance of the application, provided, however, that such personal appearance shall not be required if the applicant is a high school graduate.

3220. CERTIFICATE OF PHYSICAL FITNESS.

1. A certificate of physical fitness shall be issued to a minor if a thorough physical examination made within twelve months of his application for an employment certificate shows that such minor is of sound health, and if there are no known health problems at the time of issuance of the certificate, and if the applicant is physically qualified for lawful employment. If a known health problem exists at the time of the application for such certificate, another examination may be required by the issuing authority. Such certificate shall be issued and such physical examination shall be made, in a city of over three hundred thousand population, by a physician designated by the board of health, and elsewhere by the medical inspector charged with the duty of making physical examinations of all school children or by any physician duly licensed to practice medicine in this state. A new certificate of physical fitness shall not be required if one had been issued to the minor within twelve months.

2. If the physician authorized to issue certificates of physical fitness shall find that a minor from fourteen to eighteen years of age is not physically sound but that in the physician's opinion the minor may safely engage in certain occupations as specified by the regulations of the commissioner of education, the physician shall require a pledge of employment and may issue to the minor a certificate of limited physical fitness, and shall describe therein the physical disability of the minor and shall indicate the particular employer and the occupation in which the minor may engage. A limited employment certificate issued to a minor from fourteen to eighteen years of age who has presented a certificate of limited physical fitness shall be valid for not more than six months from the date of its issuance and shall bear on the face of the certificate the date of its expiration and the particular employer and occupation to which the employment of the minor is limited.

3. A record made of the physical examination shall show whether a certificate of physical fitness has been issued or withheld. Such record shall be sent to the certificating official.

4. A certificate of physical fitness issued in another state to a minor seeking employment in this state may be accepted in lieu of the certificate of physical fitness required by subdivision one of this section, provided the standards for issuing such certificates in the other state are deemed substantially equivalent to those of this state in

accordance with regulations adopted by the commissioner of education.

3221. PLEDGE OF EMPLOYMENT

The pledge of employment shall be signed by the initial prospective employer or his authorized representative and shall show his name and place of business, the minor's name, the number of days per week and the number of hours per day and per week during which he will be employed, the hours of the beginning and the ending of work, and the nature and type of the employment.

3222. SCHOOLING RECORD

1. By whom issued. The schooling record shall be issued by the principal of the school the minor attends or last attended, or by a teacher deputized by the principal or by a supervising official, and during the months of July and August, and at other times in extraordinary circumstances and emergencies, by one or more public school officials deputized in writing by the chancellor in New York City and elsewhere by the superintendent of schools or by the district superintendent of schools.

2. Procedure. On application of the person in parental relation, a schooling record shall be issued promptly to a minor who complies with the following conditions:

a. Presents a certificate of physical fitness. Upon receipt of an application for a school-record the person authorized to issue such record shall request that an examination be made of the minor for a certificate of physical fitness in accordance with the requirements herein prescribed.
b. Meets the specified age requirement.

3. Such schooling record shall show, when practicable, the name of the school and grade or class which the minor is then attending or last attended.

3223. DUTIES OF EMPLOYERS

The employer of any minor required to have an employment certificate:

1. Shall satisfy himself that the minor presenting an employment certificate is in fact the minor named therein.

2. Shall before employment begins, file at the place of the minor's employment such certificate so that it may be readily accessible to any authorized person to examine such document.

3. Shall, upon termination of the minor's employment, return the employment certificates to the minor.

3224. TEMPORARY SERVICES

a. If an employer is engaged in a business of assigning employees for temporary services at another establishment, and the employer compensates the employee for such services rendered, the employer shall keep on file in his office the employment certificate and shall cause to be delivered to each establishment where the child will perform his services a true copy of such employment certificate. Such delivery shall be deemed compliance with sections thirty-two hundred sixteen and thirty-two hundred twenty-three of this chapter. The owner of each establishment to which the child is assigned shall keep on file in his office such copy of the employment certificate, which shall be deemed compliance with sections thirty-two hundred sixteen and thirty-two hundred twenty-three of this chapter, and shall return such copy to the employer at the conclusion of the child's assignment. Such employer shall note on the original employment certificate the existence of each copy.

b. As used in this section, the term "establishment" includes a factory, mercantile establishment, business office, restaurant, hotel and any other trade, business or service.

c. The commissioner of education may promulgate rules and regulations as he deems necessary to insure that employment under the provisions of this section shall not be harmful or undesirable from the point of view of the welfare, development, or proper education of the child.

3225. SPECIAL EMPLOYMENT CERTIFICATE

1. A special employment certificate may be issued to a minor fifteen years of age, found to be incapable of profiting by further instruction available upon compliance with the same requirements as in the case of a full-time employment certificate.

2. The fact that a minor is incapable of profiting from further instruction available shall be determined in accordance with the provisions of section thirty-two hundred eight of this article and the regulations of the commissioner of education.

3. A special employment certificate shall not authorize the employment of a minor in or in connection with or for a factory.

3226. FARM WORK PERMITS

1. A farm work permit may be issued to a minor fourteen or fifteen years of age authorizing employment in farm service.

2. A farm work permit also may be issued to a minor over twelve years of age for employment in assisting in the hand work of harvest of berries, fruits, and vegetables pursuant to paragraph e of subdivision two of section one hundred thirty of the labor law.

3. To obtain a farm work permit a minor shall present to the issuing officer the following:

a. Evidence of age;
b. Written consent of the parent or guardian; and
c. A certificate of physical fitness.

4. Such permit shall be valid only when signed by the employer and subject only to the condition that it shall not be valid for work in or in connection with a factory.

5. A farm work permit shall not be required for the employment of a minor sixteen years of age or over in farm service.

3227. STREET TRADES

1. Definition. A street trade for the purposes of part one of this article shall include the carrying, selling, exposing or offering for sale of newspapers or periodicals, and work as a bootblack, but shall not include the occupation engaged in by a newspaper carrier as defined in subdivision one of section thirty-two hundred twenty-eight of this chapter.

2. Application. The provisions of this section shall apply to all school districts.

3. No minor under fourteen years of age shall be engaged in a street trade; and no minor from fourteen to eighteen years of age shall be so engaged unless a street trades permit has been lawfully issued to the minor.

4. A street trades permit shall be issued in the same manner and with the same requirements as in the case of an employment certificate. Such a permit shall expire two years from the date of its issuance.

5. A minor to whom a street trades permit has been issued shall carry it on his or her person while engaged in a street trade. Such a permit shall not be transferred to another minor or used by another if transferred.

6. No minor shall be engaged in a street trade before six o'clock in the morning nor after seven o'clock in the evening, nor during the time the minor is required to attend upon instruction, nor more than four hours in any one day when school is in session, nor more than five hours in any one day when school is not in session.

7. The police shall enforce the provisions of this section except with respect to the issuance and revocation of street trades permit. The industrial commissioner shall have concurrent power to enforce this section except with respect to the issuance and revocation of street trades permits.

8. The school authorities may revoke the permit for cause after due notice.

3228. NEWSPAPER CARRIER

1. Definition. A "newspaper carrier" is a minor between the ages of twelve and eighteen years of age who engages in the occupation of delivering, or selling and delivering, newspapers, shopping papers or periodicals to customers at their homes or places or business. For purposes of this section shopping papers shall mean those community publications variously known as consumer papers, pennysavers, shopping guides, town criers, dollar stretchers, and other similar publications, distributed for the purposes of advertising and public information, to the consumer without consideration being paid therefor by the consumer.

Such papers shall:

(i) be distributed to the public on a community-wide basis;
(ii) be published at stated intervals at least fifty times a year;
(iii) have continuity as to title and general nature of content from issue to issue;
(iv) contain in each issue community notices or editorial comment or articles by different authors; and
(v) contain in each issue advertisements from numerous unrelated advertisers including non-commercial advertisements.

The term "shopping papers" shall not include mail order and other catalogs, advertising fliers, travel brochures, house organs, theatre programs, telephone directories, shopping and restaurant guides, racing tip and form sheets, shopping center advertising sheets and similar publications.

2. A "newspaper carrier" shall possess a newspaper carrier permit and shall carry it upon his or her person when engaged in the occupation of delivering, or selling and delivering, newspaper, shopping papers or periodicals to homes or places of business.

3. A newspaper carrier permit shall be issued on a form prescribed by the commissioner of education to a minor qualified to participate in physical training as provided for in section thirty-two hundred four of this chapter. Minors that are not participating in physical training may be issued a permit with the approval of a school physician.

4. No newspaper carrier shall be engaged in delivering, or selling and delivering, newspapers, shopping papers or periodicals before six o'clock in the morning nor after seven-o'clock in the evening, nor during

the time the minor is required to attend upon instruction, nor for more than four hours in any one day when school is in session, nor more than five hours in any one day when school is not in session.

5. No minor under twelve years of age may engage in the occupation of delivering, or selling and delivering, newspapers, shopping papers or periodicals to customers at their homes or places of business.

6. The school authorities may revoke the permit for cause after due notice.

7. Enforcement. The police shall enforce the provisions of this section except with respect to the issuance and revocation of permits. The industrial commissioner shall have concurrent power to enforce this section except with respect to the issuance and revocation of permits.

8. It shall be unlawful for any person or corporation to willfully and knowingly deliver or cause to be delivered newspapers, shopping papers or periodicals to a newspaper carrier who is not in compliance with the provisions of this section.

3229. CHILD PERFORMERS

1. It shall be unlawful, except as otherwise provided in this section, to employ, or to exhibit or cause to be exhibited, or to use, or have custody of, for the purpose of exhibition, use or employment, any child under the age of sixteen years, or for one who has the care, custody or control of such child as a parent, relative, guardian, employer, or otherwise, to exhibit, use or to procure or consent to the use or exhibition of such child, or to neglect or to refuse to restrain such child from engaging or acting in a public or private place, except as hereinafter provided, whether or not an admission fee is charged and whether or not such child or any other person is to be compensated for the use of such child therein, in the following activities:

a. In singing; or dancing; or playing upon a musical instrument; or acting, or in rehearsing for, or performing in a theatrical performance or appearing in a pageant; or as a subject for use, in or for, or in connection with the making of a motion picture film; or,
b. In rehearsing for or performing in a radio or television broadcast or program.

2. The provisions of subdivision one of this section shall not apply to the participation or employment, use or exhibition of any child in a church, academy or school, including a dancing or dramatic school, as part of the regular services or activities thereof respectively; or in the annual graduation exercises of any such academy or school; or in a private home; or in any place where such performance is under the direction, control or supervision of a department of education;

or in the performance of radio or television programs in cases where the child or children broadcasting do so from a school, church, academy, museum, library, or other religious, civic or educational institution, or for not more than two hours a week from the studios or a regularly licensed broadcasting company, where the performance of the child or children is of a nonprofessional character and occurs during hours when attendance for instruction is not required in accordance with the education law.

3. Notwithstanding the foregoing provisions of subdivision one hereof, such a child may be employed, used or exhibited in any of the exhibitions, rehearsals or performances set forth in subdivision one hereof if a child performer permit has been issued as hereinafter provided.

4. A child performer permit shall be issued:

a. By the mayor or other chief executive officer of the city, town, or village where the exhibition, rehearsal or performance will take place.

5. An application for a child performer permit shall be made on a form prescribed by the issuing authority and shall contain such matters as the issuing authority may deem to be necessary, including the following:

a. The true and stage name and the age of the child, and the names and address of his parent or guardian;
b. The written consent of the parent or guardian;
c. The nature, time, duration and number of performances, together with the place and nature of the exhibition;
d. A detailed description of the entire part to be taken and each and every act and thing to be done and performed, except that if the performance is in connection with a radio or television program, the application shall contain a general statement describing the part or parts to be taken by the child and the nature of the radio or television program.

6. The mayor or other chief executive officer of the city, town, or village where the exhibition, rehearsal, or performance will take place may solicit the assistance of the Society for the Prevention of Cruelty to Children in New York City, and outside New York City, with the Society for the Prevention of Cruelty to Children or other child protective organization, if there be one and such other state and local agencies as he may determine.

7. No child shall perform except as provided in the permit. No permit shall be issued for the exhibition, rehearsal, or perfromance of a child which is harmful to the welfare, development or proper education of such child. A permit may be revoked by the issuing authority for good casue.

8. Violation of this section shall be a misdemeanor.

3230. EMPLOYMENT OF CHILDREN AS MODELS

1. It shall be unlawful to employ, use, exhibit or cause to be exhibited a minor as a model unless:

a. a child model work permit has been issued as hereinafter provided; and
b. such employment, use or exhibition is in accordance with the rules and regulations promulgated by the commissioner of education as hereinafter provided.

2. It shall be unlawful for any parent or guardian of a minor to obtain or consent to the employment or exhibition of such minor as a model unless a permit has been issued in accordance with this section.

3. An application for a permit for the employment or exhibition of a minor as a model shall be made by such minor or by his parent or guardian on a form prescribed by the commissioner of education and shall contain such matters as the commissioner may determine to be necessary, including the following:

a. the minor's name, address, date of birth, and if the minor is of school age, the name and address of the school the minor attends, and if the application is made by his parent or guardian of a minor over twelve years of age the consent of such minor;
b. the name and address of the parent or guardian, and the consent of the parent or guardian to the issuance of the permit;
c. a certificate from a physician showing that the minor is physically fit to be employed or exhibited as a model. In a city of over one million population such certificate shall be issued by a physician designated by the department of health if the minor is of school age.

4. A child model work permit shall be issued upon application to the superintendent of schools in cities and school districts employing a superintendent of schools and elsewhere upon application to the district superintendent of schools. A superintendent of schools or district superintendent of schools may, in accordance with regulations of the commissioner of education, designate in writing one or more public school officials to act as certificating officer in his stead.

5. A child model work permit may be issued by the certificating officer if he finds that the employment or exhibition of the minor as a model will not be harmful to his health and welfare, and that, in the case of a minor of school age, the minor's education will not be neglected.

6. A child model work permit:

a. shall be signed by each person employing, using, or exhibiting the minor prior to the commencement of the minor's employment or exhibition and shall permit the employment, use or exhibition of such minor only when signed by such persor;
b. shall not be valid when attendance for instruction is required in accordance with the education law;
c. shall terminate one year after the date of issuance;
d. may be revoked by the certificating officer at any time for good cause.

7. The commissioner of education may promulgate rules and regulations to carry out the provisions of this section. Such rules and regulations shall be designed to protect the health and welfare of child models and to insure that the conditions under which such child models are employed, used or exhibited will not impair their health or welfare.

8. This section shall not apply to the employment, use, or exhibition of a minor as a model:

a. In a television broadcast or program for whom a permit has been issued pursuant to section thirty-two hundred twenty-nine or section thirty-two hundred sixteen-c of this chapter;
b. by a federal, state, or municipal government or political subdivision or agency thereof, or by any corporation, unincorporated association, community chest, fund or foundation organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

9. Violation of this section shall be a misdemeanor.

3231-a. UNLAWFUL EXHIBITIONS.

1. It shall be unlawful for any person to employ, use, or exhibit any child under sixteen years of age, or for a parent, guardian or employer to consent to or to refuse to restrain such child in engaging or acting:

a. As a rope or wire walker, gymnast, rider upon a horse or other animal (except in a non-professional horse show), or as an acrobat, or upon any bicycle or other mechanical vehicle or contrivance unless a child performer permit is issued pursuant to the provisions of section thirty-two hundred twenty-nine of this chapter, and the child is protected by the use of safety devices or protective equipment which comply with the provisions of the Federal Occupational Safety and Health Act; or

b. As a wrestler, boxer, or contortionist;

c. In begging or receiving or soliciting alms in any manner or under any pretense, or in any mendicant occupation; or in gathering or picking rags, or collecting cigar stumps; or collecting bones or refuse from markets or streets; or in peddling; or

d. In any illegal, indecent, or immoral exhibition or practice; or in the exhibition of any such child when mentally ill, mentally retarded or when presenting the appearance of any deformity or unnatural physical formation or development; or,

e. In any practice or exhibition or place dangerous or injurious to the life, limb, health or morals of such child provided, however, that the provisions of this paragraph shall not apply to service as a member of a certified volunteer ambulance service under the supervision of an emergency medical technician as provided in article thirty of the public health law by youthful volunteers at least fifteen years of age who hold a current American Red Cross advanced first aid and emergency care card.

2. Violations of this section shall be a misdemeanor.

3232. COURTS HAVING JURISDICTION

1. Courts sitting as courts of special sessions or as magistrates' courts shall have concurrent jurisdiction with family courts to hear, try and determine charges of violation of the provisions of part one of this article, within their respective jurisdiction. In the counties

of Cortland and Westchester and in the city of New York family courts shall have exclusive original jurisdiction in such proceedings. Notwithstanding other provisions of law, family courts shall have jurisdiction, for the purposes of part one of this article, of minors.

2. A prosecution instituted under the provisions of part one of this article shall be deemed a bar to a prosecution under the labor law based on the same state of facts.

3233. PENALTIES

Except as otherwise provided, a violation of part one of this article shall be punishable for the first offense by a fine not exceeding ten dollars or ten days' imprisonment; for each subsequent offense by a fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

A violation of sections thirty-two hundred fifteen, thirty-two hundred twenty-three, and thirty-two hundred twenty four of this article shall be punishable for a first offense by a fine of not less than twenty nor more than fifty dollars; for a second offense by a fine of not less than fifty nor more than two hundred fifty dollars, or by imprisonment for not more than thirty-days or by both such fine and imprisonment; for a third offense by a fine of not less than two hundred fifty dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

Any person who knowingly makes a false statement in or in relation to any application made for an employment certificate or permit as to any matter required by this chapter to appear in any affidavit, record, transcript, certificate or permit therein provided for, is guilty of a misdemeanor and upon conviction shall be punished, except as in this chapter or in the penal law otherwise provided, for a first offense by a fine of not more than one hundred dollars; for a second offense by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for not more than thirty days or by both such fine and imprisonment; for a subsequent offense by a fine of not less than three hundred dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment.

3234. ENFORCEMENT; WITHHOLDING STATE MONEYS BY COMMISSIONERS OF EDUCATION

1. The commissioner of education shall supervise the enforcement of part one of this article and he may withhold one-half of all public school moneys from any city or district, which, in his judgement, willfully omits and refuses to enforce the provisions of part one of this article, after due notice, so often and so long as such willful omission and refusal shall, in his judgment, occur, or continue.

2. If the provisions of part one of this article are complied with at any time within one year from the date on which said moneys were withheld, the money so withheld shall be paid over by said commissioner of education to such district or city, otherwise forfeited to the state.

3240. SCHOOL CENSUS IN THE CITIES OF NEW YORK, BUFFALO AND ROCHESTER.

In the cities of New York, Buffalo, and Rochester provision shall be made by the board of education for taking a school census in connection with the work of enforcing part one of this article.

3241. SCHOOL CENSUS IN CITIES, EXCEPT IN CITIES HAVING A POPULATION OF ONE HUNDRED TWENTY-FIVE THOUSAND OR MORE.

1. The board of education of each city, except in cities having a population of one hundred twenty-five thousand or more, shall constitute a permanent census board in such city. Such board shall, under its regulations, cause a census of the children in its city to be taken and to be amended from day to day, as changes of residence shall occur among persons in such cities within the ages prescribed in subdivision two of this section and as other persons shall come within the ages prescribed therein and as other persons within such ages shall become residents of such cities, so that there shall always be on file with such board a complete census giving the facts and information required in subdivision two of this section.

2. Such census shall include all persons between birth and eighteen years of age and in the case of physically or mentally handicapped children between birth and twenty-one years of age, their names, their respective residences by street and number, the day of the month and the year of their birth, the names of the persons in parental relation to them, such information relating to physical or mental defects, to illiteracy, to employment and to the enforcement of the law relating to child labor and compulsory education as the education department and the board of education of each such city shall require and also such further information as such board of education shall require.

3. Such board shall provide to the commissioner of education upon written request therefor and in such form as shall be prescribed by him, a report containing the names, ages, and addresses of those children who are blind or deaf and those having serious physical or mental defects. In addition such report shall indicate whether such children are being educated within the public schools of the district or, if they are not, where such education is being furnished them.

4. It shall be the duty of persons in parental relation to any person between such ages residing within the limits of any such city to make such reports as the board of education of such city shall require. Such reports shall contain the following information:

a. Two weeks before any child shall become of the compulsory school age, the name of such child, its residence, the name of the person or persons in parental relation thereto, and the name and location of the school to which such child shall have been or shall be sent as a pupil.
b. In case a child of compulsory school age shall, for any cause, be removed from one school and sent to another school, or sent to work in accordance with the labor law, all the facts in relation thereto.
c. In case the residence of a child shall be removed from one police precinct to another police precinct, the new residence and the other facts required in paragraphs a and b of this subdivision.
d. In case a child between birth and eighteen years of age shall become a resident of such city for the first time, the name, residence, and such other facts as the board of education shall require.

3242. SCHOOL CENSUS IN SCHOOL DISTRICTS

The trustees or board of education of every school district shall during the month of September nineteen hundred seventy-six and at least every second year thereafter cause a census to be taken of all children between birth and eighteen years of age, including all such facts and information as are required in the census provided for in section thirty-two hundred forty-one of this chapter. Such census shall be prepared in duplicate in their respective school districts, and one copy thereof filed with the teacher or principal and the other copy filed with the district superintendent or superintendent on or before the fifteenth day of October. Such census shall include the reports and information required from cities as provided in section thirty-two hundred forty-one. All information regarding a handicapped person under the age of twenty-one years shall be filed annually with the superintendent of the board of cooperative educational services of which said district may be a part.

3243. PENALTY FOR WITHHOLDING INFORMATION

A parent, guardian or other person having under his control or charge a child between birth and eighteen years of age who withholds or refuses to give information in his possession relating to such child and required under part two of this article, or any such parent, guardian, or other person who gives false information in relation thereto, shall be

liable to and punished by a fine not exceeding twenty dollars or by imprisonment not exceeding thirty days.

(3604.) RELATED SECTION OF APPORTIONMENT LAW

7. No district shall be entitled to any portion of such school moneys on such apportionment unless the report of the trustees or board of education for the preceding school year shall show that the public schools were actually in session in the district and taught by a qualified teacher or by successive qualified teachers or by qualified teachers for not less than one hundred eighty days. The operating apportionment of a district or the approved expenditures of the district, as the case may be, shall be reduced by one one-hundred eightieth thereof for each day less than one hundred eighty days that the schools of the district were actually in session, except that the commissioner may disregard such reduction, up to five days, in the apportionment of public money, if he finds that the schools of the district were not in session for one hundred eighty days because of extraordinarily adverse weather conditions, impairment of heating facilities, insufficiency of water supply, shortage of fuel, or the destruction of a school building, and if, further, the commissioner finds that such district cannot make up such days of instruction during the school year.

8. No school shall be in session on a Saturday or a legal holiday, except general election day, Washington's birthday and Lincoln's birthday, and except that driver education classes may be conducted on a Saturday. A deficiency not exceeding six days during any school year caused by teachers' attendance upon teachers' conference held by district superintendents of schools within a county and upon meetings of the New York State Teachers' Association, shall be excused by the commissioner of education. Similarly, a deficiency not exceeding three days during any school year caused by teachers' attendance upon conferences held by superintendents of schools of city school districts or other school districts employing superintendents of schools shall be excused by the commissioner.

8b. Notwithstanding the provisions of subdivision eight of this section, a trustee or board of trustees or a board of education of a school district having fewer than six hundred pupils in grades kindergarten through twelve may provide for classes to be held on any day of the week in connection with educational programs for the disadvantaged operated under the elementary and secondary education act; provided, however, no pupils or teachers shall be required to attend such classes if they observe any such day as a Sabbath or a holy day in accordance with the requirements of their religion.

COMMISSIONER'S REGULATIONS

TEACHER CERTIFICATES

80.3 Certificates valid for pupil personnel service (school attendance teacher, school counselor, school dental hygiene teacher, school nurse-teacher, school psychologist, and school social worker). (Effective September 1, 1973)

a. Preparation: To obtain a certificate in a pupil personnel service, a candidate shall meet the requirements set forth in either (1) or (2) below:

(1) Completion of an approved program registered by the department.

A certificate will be issued upon completion of a program registered and/or approved by the Department for the preparation of one of the pupil personnel services. The form of the certificate (provisional-valid for five (5) years from date of issuance or permanent) to be recommended and issued, will be determined by the recommending institution upon approval of the department.

(2) Alternative completion of requirements

A certificate will be issued upon evidence that the requirements noted below have been met.

(i) School attendance teacher

(a) Provisional certificate

(1) The candidate shall hold a baccalaureate degree from a regionally accredited institution of higher education or from an institution approved by the Department and shall have completed in addition/or including six semester hours of professional education appropriate to the function of the school attendance teacher.

(2) Time validity: The provisional certificate shall be valid for five years from date of issuance.

(b) Permanent certificate

(1) The candidate shall have completed in addition to the requirements for the provisional certificate, a master's degree in the field of pupil personnel service or thirty (30) semester hours of appropriate graduate study in the area of pupil personnel service.

NOTE: 2(ii), (iii), (iv), (v) and (vi) have been omitted.

EXEMPTIONS FROM ATTENDANCE

101.1 Definitions

The following shall be qualified examiners for the purpose of this Part:

(a) For making examinations for physical disability, school physicians and other physicians qualified to practice in New York State.

(b) For making examinations for severe mental retardation or mental or emotional disorder:

(1) psychiatrists certified by the Department of Mental Hygiene;

(2) psychologists certified by the Department of Mental Hygiene or school psychologists holding certificates issued by the State Education Department or other psychologists certified by such department;

(3) State operated mental health clinics or mental health clinics licensed by the New York State Department of Mental Hygiene.

101.2 Exemption from attendance

Minors between the ages of six and sixteen years are required to attend upon instruction unless exempted from such attendance in accordance with the following procedures: The sole trustee, the board of trustees or the board of education of any school district may cause a minor between the ages of five and twenty-one years, who is in attendance or who is required to be in attendance, to be examined by qualified physicians, psychiatrists or psychologists as hereinafter provided. The findings of such examinations shall be submitted in writing to the committee responsible for the annual review of the status of each handicapped student in the school district, as required by the provisions of subdivision (b) of section 200.2 of this Title. Upon review of these findings, the committee shall make a written recommendation of exemption, or of other educational services to the school district's chief administrative officer. Recommendations for exemption shall be kept on file by the school district.

101.3 Certificate of exemption

Certificates of exemption shall be issued because of:

(a) physical disability, or
(b) severe mental retardation, or
(c) mental or emotional disorders.

101.4 Examination and recommendation

(a) Examination and recommendation for exemption shall be made by the persons enumerated in section 101.1, as follows:

(1) Physical disability

(i) For exemption because of physical disability for a period of not less than three months but not to exceed one year, such examination shall be made by two physicians, one of whom shall be the school physician. Such exemptions, in accordance with the best judgment of the examining physicians and the special circumstances of the case, may be recommended initially for a three month, six-month, nine-month, or twelve-month period.

(ii) Renewal of an exemption, because of physical disability, beyond the designated three, six, nine, or twelve-month period for physical disability shall be upon written recommendation after a thorough examination, by two physicians, one of whom shall be the school physician.

(2) Severe mental retardation

(i) For exemption of those children who because of severe mental retardation or deficiency are unable to benefit from instruction for a period of not less than six months but not to exceed two years, such examination shall be made by a qualified psychologist, or by a qualified psychologist and a qualified psychiatrist, or by an approved clinic, but in any case, the study shall include a careful physical examination by the school physician and any physical handicaps shall be noted.

(ii) Renewal of an exemption of those children who because of severe mental retardation or deficiency are unable to benefit from instruction beyond the period of the original exemption shall be upon the written recommendation of a qualified psychologist, or by a qualified psychologist and a qualified psychiatrist, or by an approved clinic, after a thorough examination, which shall follow the general pattern of the examination made for the original exemption. Further examinations shall be made prior to the termination of the original exemption period or subsequent to the termination thereof upon the recommendation of the examiner, if in his judgment such re-examination is desirable. An exemption, because of mental disability, will be accepted as permanent if, at the end of two years an examination, following the pattern of the original examination, indicates the condition to be permanent and a written recommendation for a permanent exemption is made by the examiner. Exemptions will not become permanent until the written recommendation made by the examiner is approved by the Education Department. When approved, certification of all permanent exemptions shall be kept in an active file as long as the exempted minors are within the compulsory school age limits and may be subject to review in any instance where exceptional circumstances would seem to justify such review.

(3) Mental or emotional disorder

(i) For exemption because of a mental or emotional disorder for a period of not to exceed six months, such examination shall be made by a qualified psychiatrist and a qualified psychologist or by an approved clinic. In any case, the study shall include a careful physical examination by the school physician and any physical handicaps shall be noted.

(ii) Renewal of an exemption because of a mental or emotional disorder beyond the period of the original exemption shall be upon the written recommendation after a thorough examination by a qualified psychiatrist and a qualified psychologist or by an approved clinic, and shall be followed by periodic examinations as necessary in the judgment of the examining psychiatrist or clinic. Said written recommendation shall include a summary of the psychiatrist or the clinic of the child's mental status.

101.5 Requests for exemption

Requests for exemption of any minor between five and twenty-one years of age shall be sent to the Bureau of School Psychological and Social Services within ten days of the issuance of an exemption certificate. The exemption request must state the reason why mandated services cannot be provided. The exemption shall become effective upon approval of the exemption request by the Bureau of School Psychological and Social Services. Notice of exemption shall be sent to the parent or guardian after the district has received the approval of the Bureau of School Psychological and Social Services.

101.6 Transfers

If a presently exempted child moves to another school district, copies of the exemption forms shall be sent to the superintendent of the receiving district and the Bureau of School Psychological and Social Services shall be notified.

101.7 Public attendance record keeping

(a) Definitions. Whenever used in this section, the following terms shall have the respective meanings hereinafter set forth or indicated:

(1) Pupil. A child enrolled in any public or nonpublic school in the State of New York.

(2) Register of attendance. Any book, card, or other form used to keep record or list or account of attendance, absence, and tardiness of a pupil, the form of which shall have been approved by the Commissioner of Education.

(3) Teacher. A member of the teaching and supervisory staff of a public or nonpublic school of the State.

(4) Employee other than a teacher. A suitable person other than a teacher employed by a public or nonpublic school of the State in a position appropriate for the keeping of records.

(b) The record of each pupil's attendance, absence, and tardiness shall be kept by each public and nonpublic school in a register of attendance in a manner approved by the Commissioner of Education.

(c) The register of attendance shall set forth at least the following for each pupil:

(1) name;
(2) date of birth;
(3) full names of parents or guardian;
(4) address.

(d) All entries in a register of attendance shall be made either by a teacher or by an employee other than a teacher designated by the board of education of a school district or administrator of a nonpublic school.

(e) The board of education or administrator of a nonpublic school shall designate a teacher to supervise the keeping of the register of attendance where an employee other than a teacher is designated by the board of education or administrator of a nonpublic school as the person to make entries in the register of attendance.

(f) The entries in the register of attendance shall be verified by the oath or affirmation of the person making the entries in the register of attendance.

HOLIDAY AND RELIGIOUS OBSERVANCE

109.1 Observance of special holidays

The Education Law (§802, subd.2) requires the observance in public schools of Lincoln's Birthday, Washington's Birthday, Memorial Day, and Flag Day. To these should be added Armistice Day and Columbus Day. Each school should observe these holidays in its own way. While the original purpose of both Memorial Day and Armistice Day was to honor those who have given their lives for their country, special exercises or study for these days may properly be directed, in the one case, to creating a better and deeper understanding of the American Union; and in the other to keeping alive the ideal of world peace.

109.2 Absence from school for religious observance and education.

(a) Absence of a pupil from school during school hours for religious observance and education to be had outside the school building and

grounds will be excused upon the request in writing signed by the parent or guardian of the pupil.

(b) The courses in religious observance and education must be maintained and operated by or under the control of duly constituted religious bodies.

(c) Pupils must be registered for the courses and a copy of the registration filed with the local public school authorities.

(d) Reports of attendance of pupils upon such courses shall be filed with the principal or teacher at the end of each semester.

(e) Such absence for a released time program, grades K-12, shall be for not more than one hour each week at the close of either the morning or afternoon session or both, at a time to be fixed by the local school authorities, provided that the time designated for each separate unit, the primary grades (K-3), intermediate grades (4-6), junior high school grades (7-9), and senior high school grades (10-12) shall be the same for all pupils in that unit in each separate school. Notwithstanding the foregoing, a board of education, in its discretion, may permit pupils in the various units which are departmentalized to be released for not more than one hour a week in groups that may include less than whole units at such times and upon such conditions as such board of education may deem proper; in no event may any pupil be released for more than one hour a week. In the event that more than one school for religious observance and education is maintained in any district, the hours for absence in each particular public elementary or secondary school unit in such district shall be the same for all such religious schools.

(f) A board of education may establish an optional program for high school students in grades 9-12 to permit a student with written approval of parent or guardian to enroll in a course in religion in a registered nonpublic high school. Enrollment in a course of this nature shall be subject to the prior approval by the public high school principal with respect to course schedule, pupil attendance and report of pupil achievement. Absence to attend such a course may be excused for the number of periods per week that the course is scheduled in the nonpublic school provided that the excused absences are at the beginning or close of a public school session and are mutually agreed upon by the school officials.

190.2 Employment or exhibition of children as models

(a) A minor employed, used, exhibited, or caused to be exhibited as a model shall be accompanied by the parent or guardian of such minor or by an adult designated in writing by such parent or guardian provided that in relation to a minor fifteen years of age or under the employer of the minor may not be so designated by the parent or guardian.

(b) No minor shall be employed, used, exhibited, or caused to be exhibited as a model during the hours he is required to be in attendance in the school in which he is enrolled.

(c) (1) No minor under 7 years of age shall be employed, used, exhibited, or caused to be exhibited as a model for more than 2 hours in any 1 day and not more than 10 hours in any 1 week nor shall such minor be so employed, used, exhibited, or caused to be exhibited during the hours of 6 p.m. to 9 a.m.

(2) (i) No minor 7 years of age through 13 years of age, in any week during which the school said minor attends is in session, shall be employed, used, exhibited, or caused to be exhibited as a model more than 3 hours in any one day in which such school is in session or 4 hours in any one day in which such school is not in session but not more than 18 hours in any such week.

(ii) No minor 7 years of age through 13 years of age, in any week during which the school said minor attends is not in session, shall be employed, used, exhibited, or caused to be exhibited as a model more than 4 hours in any 1 day but not more than 20 hours in any such week.

(iii) No such minor shall be employed, used, exhibited or caused to be exhibited between the hours of 6 p.m. and 9 a.m.

(3) (i) No minor 14 or 15 years of age, in any week during which the school said minor attends is in session, shall be employed, used, exhibited, or caused to be exhibited as a model more than 3 hours in any 1 day in which such school is in session or 8 hours in any 1 day in which such school is not in session, but not more than 23 hours in any such week.

(ii) No minor 14 or 15 years of age, in any week during which the school said minor attends is not in session, shall be employed, used, exhibited, or caused to be exhibited as a model more than 8 hours in any 1 day but not more than 40 hours in any such week.

(iii) No such minor shall be employed, used, exhibited, or caused to be exhibited between the hours of 6 p.m. and 9 a.m.

(4) (i) No minor 16 or 17 years of age, in any week during which the school said minor attends is in session, shall be employed, used, exhibited, or caused to be exhibited as a model more than 4 hours in andy 1 day in which such school is in session or 8 hours of any 1 day in which such school is not in session but not more than 28 hours in any such week.

(ii) No minor 16 or 17 years of age, in any week during which the school said minor attends is not in session, shall be employed, used, exhibited, or caused to be exhibited as a model more than 8 hours of any 1 day but not more than 48 hours in any such week.

(iii) No male minor 16 or 17 years of age shall be employed, used, exhibited, or caused to be exhibited as a model between 12 o'clock midnight and 6 a.m. and no such female minor shall be so employed between 10 p.m. and 7 a.m.

(d) Child model work permits shall accompany each minor employed, used, exhibited, or caused to be exhibited as a model and each person employing, using, or exhibiting the minor shall at the beginning and at the completion of such employment, use, or exhibition for each day indicate the exact hours of such employment, use or exhibition and shall in addition indicate the total hours of such employment, use, or exhibition for such day.

(e) The certificate of physical fitness issued to each minor employed, used, exhibited, or caused to be exhibited as a child model shall, in the case of each such minor who is in attendance at a school, be made by the medical inspector charged with the duty of making physical examinations of all school children and for each such minor not in attendance at a school shall be made by a physician licensed to practice medicine in the State of New York except that in a city of over 1,000,000 population such certificate shall be issued only by a physician designated by the Department of Health if the minor is of school age.

(f) A child model work permit shall be issued by the superintendent of schools in cities and school districts employing a superintendent of schools and elsewhere by the district superintendent of schools. A superintendent of schools or district superintendent of schools may designate in writing one or more public school officials to act as certifying officers in his stead.

(g) A child model work permit may be revoked by the certifying officer at any time for any violation of law or of these regulations or for any other good cause.

EMPLOYMENT CERTIFICATES

191.1 Casual employment for which employment certificate is not required

(a) Yard work and household chores in and about a residence or premises of a nonprofit, noncommercial organization for which an employment certificate is not required under the provisions of subdivision 7 of section 3215 of the Education Law and section 131 of the Labor Law shall include the following:

(1) Mowed grass by hand-mowers;
(2) Weeding;
(3) Raking leaves;
(4) Watering lawns;
(5) Shoveling snow;
(6) Sweeping walks;
(7) Washing dishes and other light kitchen work;
(8) Other similar light household chores;

(9) Acting as a companion to younger children;
(10) Caring for dogs and other pets which have no known vicious propensities; and
(11) Acting as guides and other light housekeeping duties in hospitals and other noncommerical institutions.

INSTRUCTIONS FOR REGISTER KEEPING

I. GENERAL DIRECTIONS:

1. Entries. All entries should be made in black or blue-black ink.

2. Corrections. The attendance register may be subpoenaed in court as evidence of a pupil's presence in or absence from school. Do not, therefore, make erasures or use ink eradicator for corrections. Circle the error, signal with a star or asterisk and note the reason for the correction in the margin of the register.

3. Security of the Register. The register should be kept in the school building at all times, except when otherwise ordered by the school administrator. In case of fire or during fire drills, the register should be removed from the building as a protective measure, unless kept in a fire-resistive safe or vault.

II. PUPILS ENTERING SCHOOL:

1. The Class List. Before any names are entered in the register, a list should be made of the names of all minors who are either required or expected to attend school in the class to which the register pertains. This list should be checked for completeness against the school census. The names should then be entered in the attendance register in alphabetical order, with additional personal data required. Boys and girls need not be separated. Do not list the names of pupils who have been exempted from attendance, graduated, or who are known to be attending elsewhere.

2. Use of Letter "E." After the name of each child in attendance on opening day of school, place the letter "E" in the space for the opening day to indicate that he is present. After the name of each pupil of compulsory age who is absent on opening day, but who has not left the district, place a chevron to indicate absence. Continue to enter the chevron for each day until he enters. Then place the letter "E" in the space for the day on which he enters and code the chevrons with the proper symbols to show the cause of absence. When pupils other than those required to attend the first day enter place the letter "E" in the proper space for the day on which they actually enter. This applies to transfers from another school, from another register in the system, or to pupils not of compulsory age who enter for the first time. In these cases a line should be drawn through the spaces from the opening day of school to the "E", and a note made to indicate where the pupil had previously attended. Their names will, of course, not appear in aophabetical order.

The above instructions for register keeping have been approved by the Commissioner of Education, and must be followed whether the school district uses the traditional register of attendance or data processing procedures.

(Please refer to Education Law, Section 3211, page 13.)

III. RECORDING ABSENCES AND TARDINESS:

1. What to record. The attendance register is intended to show any unusual or irregular circumstance connected with a pupil's attendance in school. All absence, tardiness, and time lost by a pupil excused for part of a school day should be recorded and explained with the proper symbol.

2. Method of Recording. A pupil is not to be counted present and immediately excused. No pupil is to be counted present who is not present for at least one period of instruction. A pupil not in his assigned place at the time required is absent and is to be so marked in the register. A chevron will be used for this purpose as illustrated on page three.

3. Explaining Absence. The letters and symbols shown below should be used to explain all time lost from school. Excuses should be required for all absence and tardiness. If excuses are not received, and investigation does not determine otherwise, all absences should be entered as illegal.

Legal		Other Legal
Sickness	S	Impassable roads or weather
Sickness or death in family	F	Religious Observance
Excused absence, part of a day	X	Quarantine
		Required to be in court
		Music lessons
Illegal		Attendance at health clinics
Unlawful detention	U	Approved cooperative work program
Truancy		Approved college visits
Suspension	Su	Military Obligations

4. Full-Day Absences. The chevron is always used for full day absences, regardless of the reason for absence, and coded appropriately. When school is in session only for half a day, a child who is absent is considered as having been absent for a full day.

5. Part-Day Absences.

a. Excused. The symbol "X" should be used only for excused part-day absences of a legal nature. Pupils may be excused only for legal reasons as set forth above. No symbols or codes, other than the symbol "X" should be entered in the register. The time a pupil leaves and returns should, however, be entered in a "sign out" book or other record of a similar nature and kept in the main office or some other central place. The "sign out" book or other record must be filed and stored with the registers at the end of the year.

The symbol "X" is not to be used for absence at the beginning of the day unless a pupil has been previously excused by the school. If the reason for absence is not known the half chevron should be entered for the absence. If the pupil enters later in the day the absence is considered as a tardiness and coded with appropriate symbol. If the excused pupil extends

his absence for the full day the chevron and proper code are used rather than the symbol "X".

b. Other. In cases where parents remove their children from school unlawfully the symbol "O" should be entered in the register without the chevron, thus indicating absence for part of a day. The symbol"__" is used in the same manner to indicate truancy which occurs after attendance has been taken.

6. Miscellaneous. In some schools pupils are not released during the noon hour, or no definite lunch hour is observed at the same time for all pupils. In such cases a pupil who enters late is recorded as absent for one half day if he enters after half of the scheduled class periods for that day have elapsed.

Occasions may arise when absence from school for a day or part of a day may appear to be of a legal nature but where no appropriate symbol is provided to explain such absence. In such cases, teachers should add the explanation in the margin of the register, using an asterisk to signal the entry explained. (House burned)

Suspension should not exceed five days for a minor of compulsory school age, unless within that time, some other provision is made to continue his education, or the case has been referred to the courts.

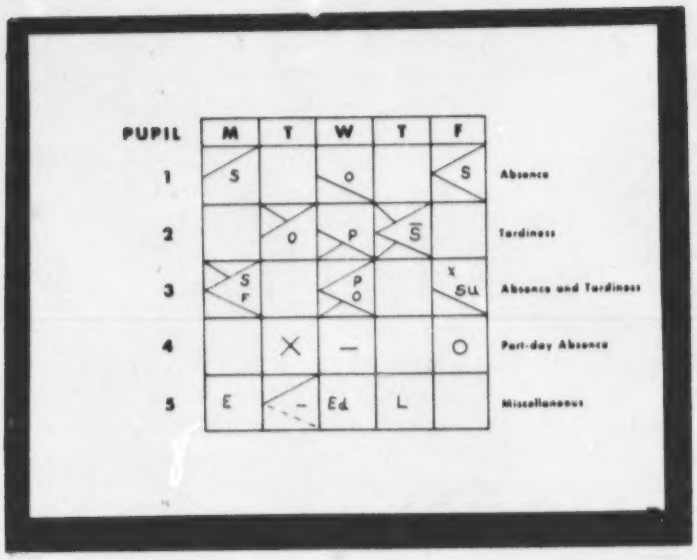
Generally, absences for family reasons should be limited to no more than five days during any one year.

Bus tardiness need not be recorded in the register.

7. Illegal Absence. Most absences not mentioned in item 3 above are interpreted under the law as illegal absence or unlawful detention. Unlawful detention occurs when a pupil is absent with the knowledge and consent, stated or implied, of his parent, for other than legal reasons. Such excuses as the following come under this heading: "visiting", "away", "vacation", "shopping", "needed at home", "caring for baby", "work", "no shoes", "overslept", etc. A child, whose parents expect him to be in school, and who does not attend for other than lawful reasons is truant.

8. Education Trips. Educational trips are not absences from school the chevron should never by used to record them. Educational trips should be planned as an integral part of a particular course or program and the pupils must be accompanied by a teacher. On these few occasions, the pupil's absence from his regularly assinged place may be indicated by the use of the symbol "Ed", or with the asterisk and the time and explanation recorded in the margin of the register. Class trips, trips with parents, vacations etc. are not appr ved education trips.

9. Illustration



Pupil 1. Monday, absent a.m. sick. Wednesday, absent p.m., unlawful detention. Friday, absent all day, sick.

Pupil 2. Tuesday, tardy a.m., unlawful detention. Wednesday, tardy p.m., religious observance, Thursday, tardy a.m., truancy; tardy p.m., sick.

Pupil 3. Monday, tardy a.m., sick; absent p.m., sickness in family. Wednesday, absent a.m., military obligation; tardy p.m., unlawful detention. Friday, excused part of a.m., required to be in court; absent p.m., suspension.

Pupil 4. Tuesday, excused part of session, music lessions. Wednesday, absent part of session, truancy. Friday, absent part of session, taken from school by parent to babysit.

Pupil 5. Monday, pupil entered. Tuesday, absent a.m., truancy; schools closed p.m. Wednesday, education trip. Thursday, pupil left or transferred.

IV. PUPILS LEAVING SCHOOL:

1. Recording. When a pupil leaves school the letter "L" should be placed in the space for the last day the pupil attended. A horizontal line should then be drawn through the remaining spaces for the year and the work "LEFT" written on the line. On the line write also reason for leaving and in case of transfer, the name of the receiving school or institution. No symbol or code is required.

2. Conditions necessary if pupil is to be marked "LEFT." No pupil in a public school shall be discharged, nor shall his record be terminated except for one of the following reasons: death, moved, address

unknown, verified admission to another school, transfer to another room, withdrawal of a child by parent, exemption from attendance, admission to an institution. Reason for leaving must be definitely established.

V. TOTALS

At the end of each attendance period the totals for each pupil should be entered in the appropriate columns. The totals in the column for absences (column 9) plus the totals in the column for number of days attended (column 10) must equal the total possible attendance for each pupil (column 11). The class totals should be computed by adding down each column. The register should be balanced by making sure that the class total in column 9, plus the class total in column 10, equals the class total in column 11.

VI. SUMMARIES

Read the instructions on page 4 before completing the summary on page 5. Complete all items on the summary sheet as directed by the instructions. The columns in the register are numbered to correspond with the numbers of the same columns on the summary sheet. For items 7 through 11 it is merely necessary to transfer the class totals to the same numbered columns on the summary sheet.

VII. MISCELLANEOUS

1. Persons permitted to keep registers. Persons other than the teacher may keep the register. Registers may be kept in a central place. In this case the board of education shall designate a professional member of the school staff to supervise the employee making the entries.

2. The forty week attendance card. If a person other than the teacher keeps the register, the teacher should be provided with a forty week attendance card for each pupil in her class or homeroom. This card should be sent to the office daily for the use of the attendance teacher or supervisor, and the person making register entries.

3. When school is closed. When school is closed for all or part of a day, indicate the time and cause of closing in the column for that day. For absences which occur when school is in session for one half day, complete the chevron, however, use a dotted line for that part of the day during which school was closed (see instructions on page three).

4. Attendance for conference and Regents days. No attendance shall be recorded for pupils for days teachers spend at zone meetings or superintendents conferences. In all registers, attendance records shall be omitted for those grades for which Regents examinations are held, unless regular sessions are held on these days.

5. Days in session. Schools must be in session for 180 days inclusive of Regents examination and scholarship days, and conference days as provided by law.

6. Register Periods. Registers may be kept on either an eight or ten period basis. When kept on an eight period basis, each period must be contained within at least five consecutive calendar weeks. When kept on a ten period basis, such periods must run consecutively and must end on the last Friday of each calendar month. (Note, this does not necessarily mean the last Friday for which school was in session).

7. Substitutes. On occasions when the regular teacher is absent the person taking attendance should sign in the place provided in the register for this purpose.

8. Teachers attendance. Teachers should record their own attendance in the space provided at the bottom of each page.

9. Affidavit. The entries in the register of attendance shall be verified by the oath or affirmation of the person making the entries in the register.

AFFIDAVIT

Month_____ day_____ 19____

State of New York
SS
County of_____

I,_____ herewith certify that I have been duly designated to maintain the register of attendance of pupils; that the annexed register for grade_____ consisting of_____ pupils for the school year 19__-19__ is correct to the best of my knowledge, and I have fully complied with all of the instructions for attendance keeping.

Signed_____

Name Typed_____
or Printed

Subscribed and sworn to before me this_____ day of_____ 19_____

_____ District Clerk or Notary

Signatures of Substitutes	Date	
	Month	Day

RELATED LAWS

Article 8 - Section 100 - (Alcoholic Beverage Control Law) - Employment of minors

Article 10 - Section 1012 - (Family Court Act) Protection of Abused Children

Article 19-Section 902 - Employment of medical inspectors (school physician)

Article 19 - Section 904 - Exminations by medical inspectors (school physician)

Article 21 - Section 2164 - (Public Health Law) - Immunization

Article 51 - Section 2503 - Powers and duties of board of education

Article 51 - Section 2508 and 2566 - Powers and duties of superintendent of schools

Article 51 - Section 2570 - Bureau of Compulsory Education (N.Y.C.)

Article 61 - Section 3024 - Teachers responsible for record books

Article 61 - Section 3205 - Verification of school register

Article 73 - Section 3604 - Apportionment
Section 3604 - School Calendar on Legal Holidays

Article 89 - Section 4401-4407 - Handicapped Children

Article 93 - Section 4606 - School to employment program (See Commissioner's Regulations 141.6)

*Articles 8, 10, and 21 are not Education Law

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